IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 744 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NARESHBHAI GOVABHAI BHAMBHI

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner
MR JR DAVE for Petitioner
MR KG SHETH, Ld. APP for Respondent

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 16/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This Criminal Appeal arises out of the judgement and order rendered by the learned Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No.120/1996 on June 9, 1997, convicting the present appellant for offence punishable under Sections 376, 366, 363 and 323 of I.P.C. The learned Sessions Judge sentenced the petitioner to undergo rigorous imprisonment for a period of 10 (ten) years and to pay a fine of Rs.5,000/- (Rupees five thousand only) and, in default, to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 376; rigorous imprisonment for a period of 5 (five) years and a fine of Rs.3,000/-(Rupees three thousand only) and, in default, to undergo rigorous imprisonment for a period of six months was imposed for the offence punishable under Section 366; rigorous imprisonment for one year and a fine of Rs.500/-(Rupees five hundred only) and, in default, rigorous imprisonment for two months was imposed for the offence punishable under Section 363; and simple imprisonment for a period of two months and a fine of Rs.200/-(Rupees two hundred only) and, in default, rigorous imprisonment for 15 (fifteen) days was imposed for the offence punishable under Section 323 of IPC. All sentences were ordered to run concurrently with the benefit of set off. The appellant was charged to have committed offences punishable under Sections 363, 366 and 376 in respect of Lilaben Ramjibhai Prajapati of Village Laxmipura on 10-6-1996 at about 7.45 p.m. It is the case of the prosecution that Lilaben Ramjibhai Prajapati, aged about 14 years, had gone to purchase vegetable. While she was returning home and was passing by Veterinary Dispensary, the appellant caught hold of her and dragged her on the side of the road and forcibly laying her on the floor committed rape. Thereafter, he fled away. The victim went home and informed her parents about the same. The parents enquired about the appellant, but he was not to be found. They, thereafter, approached Khedbrahma Police and lodged a complaint. Offence was registered vide Khedbrahma Police C.R. No.I-44 of 1996 and investigation was made. On conclusion of the investigation, Police found sufficient evidence against the appellant and, therefore, filed a chargesheet against him. The learned Magistrate, after following the procedure, committed the case to the Court of Sessions as the offences charged against the appellant were triable exclusively by the Court of Sessions. Sessions Case No.120 of 1996 came to be registered by the Sessions Court and charge was framed against the appellant at Ex.4. The appellant pleaded not guilty to the charges and claimed to be tried.

1.1 Considering the evidence led by the prosecution, the learned Sessions Judge came to the conclusion that the prosecution had successfully established the charges against the appellant-accused and convicted and sentenced him as stated above by the impugned judgement and order. Aggrieved by the said judgement and order, original accused has preferred this appeal.

2. Learned Advocate, Mr.A.M.Parekh, appearing for the appellant has taken us through the records and proceedings. Considering the evidence, Mr.Parekh does not challenge the conviction part of the judgement and order. His main emphasis is on the quantum of punishment inflicted on the appellant.

3. Mr.Parekh submitted that when the incident occurred, the appellant was a young bachelor of about 23-24 years. He is in incarceration since the day of his arrest and he has undergone rigorous imprisonment of more than eight years and six months considering the benefit of remission etc. Mr.Parekh submitted that the appellant has lost his father, mother and elder brother and mercy may be shown on him.

4. The appeal is opposed to by Mr.K.G.Sheth, learned APP appearing for the respondent State.

5. We have gone through the records and proceedings and on a critical scrutiny of the evidence, we find that Mr.Parekh has justifiably not challenged the conviction. It may be noted that at the time of the incident, the victim was aged 14 years, her version is supported by cogent medical evidence and no other conclusion except guilt of accused was possible to be arrived at.

6. It may be noted that the appellant was a young man of 23-24 years of age. He does not have any criminal antecedents. Section 376 of IPC prescribes a minimum sentence of seven years, which may go upto ten years. The learned Sessions Judge has imposed the maximum sentence of ten years prescribed by law.

7. Having regard to the peculiar circumstances of the case, in our opinion, ends of justice would be met if, instead of ten years rigorous imprisonment, the maximum punishment prescribed by the law, and imposed by the trial Court, the appellant is ordered to undergo rigorous imprisonment for a period of eight years and six months and to pay a fine of Rs.6,500/-(Rupees six thousand five hundred only), instead of Rs.5,000/-(Rupees

five thousand only). The appellant shall undergo a further rigorous imprisonment for a period of one year in event of default of any payment of fine. In our opinion, so far sentences for other convictions under Section 366, Section 363 and Section 323 are concerned, no change in any sentence is called for.

8. We direct that the substantive sentence shall run concurrently.

9. In event the appellant pays the amount of fine totalling to Rs.10,200/- (Rupees ten thousand two hundred only), an amount of Rs.8,000/(Rupees eight thousand only) shall be paid to the prosecutrix, Lilaben Ramjibhai Prajapati, daughter of Ramjibhai Mankabhai Prajapati by way of compensation. The appeal, therefore, stands partly allowed accordingly.

16-4-2002 (M. C. Patel, J.)

(A. L. Dave, J.)

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